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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WAYSIDE CHURCH, ET AL.,

Plaintiffs,

v.

CASE NO: 1:14-CV-1274

COUNTY OF VAN BUREN &
KAREN MAKAY,

Defendants.

_____ /

* * * *

MOTION HEARING

* * * *

BEFORE: THE HONORABLE PAUL L. MALONEY
United States District Judge
Kalamazoo, Michigan
November 5, 2015

1 APPEARANCES:

2

APPEARING ON BEHALF OF THE PLAINTIFF:

3

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9 APPEARING ON BEHALF OF THE DEFENDANT:

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KATHLEEN S. THOMAS, U.S. District Court Reporter
410 West Michigan Avenue, Kalamazoo, Michigan 49007
(269)385-3050

1 Kalamazoo, Michigan

2 November 5, 2015

3 at approximately 1:34 p.m.

4 PROCEEDINGS

5 THE COURT: This is File Number 14-1274; Wayside
6 Church, et al. vs. Van Buren County and Karen Makay. This
7 matter is before the Court for oral argument on the defendants'
8 motion to dismiss and the plaintiffs' motion for summary
9 judgment.

10 The record should reflect that Attorneys Shek and
11 Ryan are here on behalf of the plaintiffs. Attorney Tom King
12 is here on behalf of the defendant.

13 The Court's had the benefit of the briefing in this
14 matter, and I appreciate the quality of the submissions. What
15 I would like to do is I would like to divide the argument into
16 the (b)(1) issues and the (b)(6) issues, and if we could
17 proceed on the 12(b)(1) issues first, and then we will go from
18 there.

19 Mr. King.

20 MR. KING: Thank you very much, your Honor.

21 Your Honor, we are here before the Court today on a
22 three-count Complaint wherein the plaintiffs have alleged in
23 Counts One and Two taking claims, Count One of the Fifth
24 Amendment and Count Two under 42 U.S.C. Section 1983, and Count
25 Three, what I would refer to as a pendant state claim for

1 construction of the statute. The first two counts are alleged
2 to be based on federal jurisdiction, that is the claim of
3 jurisdiction here. And as the Court has pointed out, we are
4 here today on my clients', Van Buren County and Karen Makay's,
5 motion, to dismiss for lack of jurisdiction based on ripeness,
6 the (b)(1) claim, and then subsequently we will be arguing the
7 (b)(6) claim, which is a motion to dismiss for failure to state
8 a claim.

9 Specifically, the plaintiffs do not challenge the
10 notice that was given or make any allegations with regard to
11 the notice and due process. What they challenge, they seek to
12 challenge only one thing, and that is that after the
13 foreclosure has occurred and the treasurer has taken title to
14 the property based upon the foreclosure process, and if there
15 is a subsequent sale, and that sale then results in greater
16 funds than the original amount of the taxes, that somehow they
17 are entitled to the funds from the treasurer's subsequent sale
18 after foreclosure.

19 This-- These claims kind of misconstrue the statute
20 and what it is. Michigan is a deed state as opposed to a lien
21 state. And what that means, your Honor, is the process that
22 was adopted, I believe in 1999, and then amended somewhat in
23 2001, provides for a foreclosure of the title to the property
24 in exchange for the delinquent taxes, so when taxes become
25 delinquent, there's a lengthy process, it takes about three

1 years to go through the process from the time the treasurer
2 obtains-- the county treasurer obtains the taxes that are
3 delinquent until the running of the redemption period. Through
4 that process, there are multiple notices, of course, that are
5 sent to the taxpayer, and we are not here to-- because they are
6 not challenging that they didn't get notice. Once that process
7 occurs, there is also a court proceeding whereby there is a
8 foreclosure hearing, and from that foreclosure hearing, the
9 state court enters a judgment. The judgment provides that in
10 the event that they don't redeem within the redemption period,
11 then the title vests in the treasurer. And that's what makes
12 it different than your standard mortgage foreclosure, which is
13 a lien foreclosure. This is a foreclosure whereby the property
14 is obtained in judgment against or with judgment against it and
15 obtained title to the treasurer based on nonpayment of taxes.

16 The redemption period runs typically on March 31st of
17 the year approximately three years after they are transferred
18 to the treasurer. The judgment of foreclosure under the
19 statute is entered at the beginning, typically at the beginning
20 of February. The hearing must occur within 30 dates before
21 March 1st, of that same year.

22 So once that occurs, then title to the property vests
23 absolutely in the treasurer's office and the treasurer. Once
24 that occurs, then there are a number of things that can happen
25 to the property. It can go to a land bank, which means that

1 the treasurer typically would keep title to the property, if
2 that's what the treasurer decides to do with it. Local units
3 of government can request the property be used for public
4 purpose or the treasurer can subsequently sell it as excess
5 property. And we are here because these properties were
6 subsequently sold as excess property after the treasurer had
7 obtained fee simple title to the parcels. It's the position of
8 these plaintiffs that when that subsequent sale occurred, that
9 they were entitled to any proceeds from the sale that exceeded
10 the original amount of the taxes. However, that is not the way
11 the foreclosure act or the foreclosure occurs, because in the
12 event that the treasurer obtains title to a parcel of property
13 that subsequently sells for less, there is no deficiency. It's
14 simply an exchange of the taxes owed are wiped out in exchange
15 for title to whatever title to the property that the taxes are
16 assessed upon, whatever the value of that property, however
17 contaminated it may be, and worthless it may be, or how ever
18 valuable it may be, and the treasurer doesn't know at the time
19 of the foreclosure, it doesn't know until the subsequent sale
20 whether or not the property is going to generate more money
21 than those taxes that were previously foreclosed and title was
22 received.

23 Our motion, based on Federal Rule of Civil Procedure
24 12(b)(1) is based upon a lack of jurisdiction of this Court
25 based on ripeness. The standard of review is set forth in our

1 brief and the lack of jurisdiction is based upon the seminal
2 case of Williams County Regional Planning vs. Hamilton Bank,
3 found at 473 U.S. 172, a 1985 case, established a two-prong
4 test for determination of ripeness related to taking claims.

5 The first prong has to do with whether or not the
6 state in its process had reached the final decision conclusion
7 with regard to the alleged taking of the property. For
8 purposes of our case, the prong one, we don't challenge that
9 that prong has been met.

10 The second prong of the Williamson rule is if a state
11 has an adequate proceeding for seeking just compensation, the
12 property owner cannot first come to federal court and claim
13 federal court violation of the Federal Constitution until it's
14 first gone through the state proceedings. It's this prong that
15 we believe has not been met in this particular case. Michigan,
16 of course, in it's Constitution, as cited in our brief in
17 Article 10 Section 2 has a provision that mirrors the Federal
18 Constitution with regard to taking of property without just
19 compensation. In addition-- That's in the Michigan
20 Constitution of 1963. That case has been-- or that
21 Constitutional provision has been held to be coterminous or
22 coterminous with the breadth and scope of the U.S.
23 Constitution's taking clause by the Michigan Supreme Court.
24 The General Property Tax Act has a provision providing a remedy
25 for somebody claiming money damages on a tax foreclosure being

1 MCL211-- 211.781 and also the Michigan has a statutory takings
2 statute, and the Michigan Supreme Court has recognized inverse
3 condemnation actions, and we have cited the caselaw for that in
4 our brief.

5 THE COURT: Well, the inverse condemnation statute
6 applies to eminent domain takings, correct?

7 MR. KING: But it's been deemed in the caselaw to
8 also apply to actions with regard to takings-- regulatory
9 takings in the State of Michigan as well and--

10 THE COURT: This case isn't a regulatory taking, is
11 it?

12 MR. KING: It's akin. It's a statutory proceeding
13 taking. It's akin to a regulatory taking. It's akin to a
14 taking whereby the state has taken the property based upon a
15 statute or regulation, and it's alleged that it's been taken
16 without just compensation. I would suggest that the Sixth
17 Circuit Macene vs. MJW, Inc., 951 F.2 700, a 1991 case, and
18 Merkur Steel Supply vs. Detroit are two cases that would
19 suggest that inverse condemnation is appropriate and applicable
20 to this type of situation.

21 THE COURT: Merkur was an imminent domain case,
22 wasn't it?

23 MR. KING: It was. It was.

24 THE COURT: In Section 78 L, which you referred to
25 earlier, provides for damage action, but it can only be-- by

1 its terms can only be based on lack of notice, correct?

2 MR. KING: It does indicate that it's based on lack
3 of notice. Interestingly enough, doesn't--

4 THE COURT: It doesn't say anything else other than
5 that?

6 MR. KING: No, it does not, your Honor.

7 THE COURT: So how does that statute apply to this
8 case where plaintiff is seeking just compensation for not based
9 on notice, but based on something else?

10 MR. KING: We believe it's more appropriate under the
11 inverse condemnation case, and the proof is actually kind of in
12 the pudding, your Honor, the Rafaeli case out of the Eastern
13 District that we cited to the Court, that case is currently
14 pending in the Michigan Court of Claims on just such that type
15 of claim. And that is after the opinion that we cited from
16 Judge Berg on the Eastern District which dismissed the-- an
17 identical case in the Eastern District for a lack of ripeness
18 on that side.

19 As I indicated, Judge Berg has recently had occasion
20 to review a case with the same types of taking claims as this
21 one and has dismissed-- I know that case isn't binding on this
22 Court, but it construes the exact same statute, so we thought
23 it might be instructive, your Honor. Judge-- In fact, Judge
24 Berg specifically found that Michigan had inverse condemnation
25 cause of action. He contrasted it with the principal case

1 cited by the plaintiffs in this, which is the Coleman case out
2 of the DC circuit, and quite frankly, there are a couple of
3 things going on in that case, one is directly in it and one
4 could be read between the lines. The first one directly going
5 on is that it's in the District of Columbia. The District of
6 Columbia doesn't have a Constitution, in fact, uses as its
7 Constitution the Constitution of the United States of America,
8 and so there isn't any similar Constitutional prohibition
9 against taking in the District of Columbia, and the Court said
10 so, and that was the way the Court got by the-- in the District
11 of Columbia case, the Coleman case got by the fact that there
12 was a claim of lack of ripeness.

13 In addition, that case there was a-- that case was
14 pending during an amendment of the statute, and if you read the
15 case very closely, the delay in that matter would have allowed
16 the plaintiffs to apply under the statute and possibly get some
17 of those proceeds back because the statute was in the process
18 of being amended and had been amended and it had been awaiting
19 taking effect.

20 The justification in Judge Berg's case for the
21 Michigan Constitution of 1963 Article 10 Section 2 providing a
22 remedy is that the opinion, in that case on Page 18 and 19, and
23 based on that case, the Williamson, and the Williamson case
24 Judge Berg found that the-- that the second prong of the
25 Williamson case had not been met and dismissed, as I indicated,

1 virtually identical cases, it had some additional claims, but
2 it had our claims in it and it was construing the exact same
3 statute, dismissed it for lack of ripeness under 12(b)(1).

4 We believe that that is consistent with the
5 Williamson case and it's progeny and the other cases we cite in
6 our brief, and we believe that that is the appropriate action
7 to take on the 12(b)(1) claim.

8 Does the Court have further--

9 THE COURT: I don't have any questions at this point,
10 Mr. King. Thank you.

11 Let me hear from Mr. Ryan. Go ahead, Mr. Ryan.

12 MR. RYAN: Thank you, your Honor.

13 The Court is correct in pointing out that inverse
14 condemnation arises out of an exercise of the eminent domain
15 powers. Whereas here essentially the plaintiffs are saying
16 hey, we've overpaid our taxes. The taking has arisen here out
17 of the taxing power of the Court, and they would like a refund
18 for their taxes that have been paid. The county treasurers
19 have been satisfied. They have received a windfall here, and
20 the plaintiffs here are saying the equity in the property is
21 ours, we are entitled to it back. The treasurers are saying--
22 they raise Williamson. Williamson has two prongs, the finality
23 prong, which they do not dispute, but also it says that if
24 there is an adequate remedy at state law, you first have got to
25 go and exhaust those administrative remedies. In this case,

1 clearly there is no reasonably certain and adequate provisions
2 provided in order to pursue those remedies. So let me back
3 up.

4 The second prong states that if the state provides an
5 adequate remedy, no claim may be made in federal court until
6 that remedy has been pursued. Our argument here is that there
7 is no remedy provided in this statute for the equity that
8 remains after the tax foreclosure sale. If there was, we would
9 certainly follow it, but there isn't. And so for that reason
10 alone, you can stop right there. Williamson is in apposite and
11 the matter remains ripe.

12 Now, the treasures point out well, there is a case
13 called Rafaeli where the same kind of thing happened. And that
14 occurred in June over in the Eastern District Court. And Judge
15 Berg there really kind of highlighted the issues. I want to
16 read Footnote 2 from his opinion. It says, "It cannot be
17 denied that the concept of the state confiscating all of the
18 equity of a citizen's property worth between \$24,500 and
19 \$70,000 and selling it and keeping the entire proceeds, all to
20 collect \$8.41 in property taxes, and \$277.40 in interest and
21 fees is a manifest injustice that should find redress under the
22 law. Property taxes must be paid, but for the county treasurer
23 to reap such an overwhelming windfall by depriving a property
24 owner of his entire interest in a property and gains ten of
25 thousands of dollars, more than the tax bill ever was, looks

1 like an abuse of power-- more like an abuse of power than like
2 a local government's reasonable measures ensure the collection
3 of property taxes." That's what Judge Berg said in Footnote 2
4 on Page 6 of his opinion.

5 The treasurers point out they say, well, some of the
6 property that they acquire on a tax sale is-- well, obviously
7 it's all deficient for tax reasons, but some of it is in-- it's
8 contaminated, some of it's undesirable property. Other
9 property is obviously, as the plaintiffs have experienced in
10 this case, worth a lot of money, it's worth a lot of a windfall
11 to them. Well, if that was the justification, it would
12 certainly have been set forth in the purpose of the statute,
13 and that's not here. That's not founded here at all. They are
14 making this up as they go, and that--

15 THE COURT: Who is making it up as they go?

16 MR. RYAN: The treasurers are. Mr. King here stated
17 that some of this, this is all justified by the fact that some
18 property is undesirable and some property is represents a
19 windfall.

20 THE COURT: Well, you are not suggesting there's been
21 a non-compliance with the statute, are you?

22 MR. RYAN: No, I'm not. I'm just saying the argument
23 is that it's disingenuous, because if that is the purpose of
24 the statute, it's not set forth that way. That's all I'm
25 saying.

1 THE COURT: Well, didn't the state legislature, and
2 presumably the governor who signed the bill, set forth some
3 purposes of the changes that they made in 1999?

4 MR. RYAN: That's true, they did, but as we pointed
5 out in our brief--

6 THE COURT: Why should I disagree with them about
7 that?

8 MR. RYAN: You don't have to disagree with them at
9 all.

10 THE COURT: Those are the policy choices of the
11 legislature; is that correct?

12 MR. RYAN: That's entirely correct. And I'm not
13 asking you to disagree with what they said. We pointed out in
14 our brief that this was probably something that wasn't really
15 contemplated at the time the statute was written. We've had a
16 balloon in property values through the years. We have had tax
17 system that was in place from I think 1899 until 1999 or 1893
18 to 1999 that didn't even contemplate the item of a surplus. So
19 it's really just kind of a-- we are here today and other
20 plaintiffs are here in the state requesting the same relief
21 because it just--

22 THE COURT: Why is Judge Berg wrong?

23 MR. RYAN: Why is Judge Berg wrong?

24 THE COURT: You quoted quite appropriately, as I
25 would expect you would from Footnote 2, so you like that part

1 of the opinion, but I presume you don't like the rest of it.

2 So why is Judge Berg wrong in his legal analysis?

3 MR. RYAN: Primarily because the Rafaeli case is
4 founded upon a notice issue, and this is certainly we are not
5 alleging any due process violation here whatsoever. Rafaeli
6 says that he didn't get the notice and sets forth in great
7 detail how they didn't get notice. We are not saying that here
8 at all. But let me play the record forward, if I could.

9 THE COURT: So if I understand what you just said,
10 you view Rafaeli as a notice case?

11 MR. RYAN: Yes, it is yes. Yep.

12 But Mr. King represented that the Rafaeli case was
13 before the Court of Claims in the State of Michigan, it's not,
14 your Honor, and in fact.

15 THE COURT: Is it in front of the circuit, because I
16 recognize that, you know, the non-prevailing party before Judge
17 Berg might have wanted to appeal, we couldn't find an appeal of
18 Judge Berg's decision.

19 MR. RYAN: Correct. I found it, and I have it here,
20 I would like to present it to you, if I could.

21 THE COURT: Present me with what?

22 MR. RYAN: Well, this is an order from the-- summary
23 disposition order-- opinion and order from the Circuit Court
24 for the County of Oakland, it's dated October 8, 2015. The
25 matter in Rafaeli was dismissed by Judge Berg in June. The

1 plaintiffs there had a pending action for which Judge Berg
2 recognized there was injunctions in place, the plaintiffs had
3 already sought and obtained some local state remedies, that
4 case then played forward to this opinion dismissing the case in
5 October.

6 THE COURT: All right. The briefing didn't inform me
7 of that, right?

8 MR. RYAN: Well, this is October 8, yes.

9 THE COURT: So come under the category of breaking
10 news, right?

11 MR. RYAN: Correct.

12 THE COURT: Fair enough.

13 MR. RYAN: We are not trying to hide the ball here.

14 THE COURT: I understand. If you want to hand that
15 to Ms. Cavazos, I'll take a look at it.

16 MR. RYAN: Thank you.

17 MR. KING: Do you have an extra copy of that?

18 MR. RYAN: I do, give me a second here.

19 THE COURT: Mr. King, have you seen this?

20 MR. KING: I have not seen it. I have been regaled
21 with tales of its existence, and if I said Court of Claims, I
22 apologize, it is Oakland.

23 MR. RYAN: Yes, Mr. Shek informs me this was arose
24 out of a new filing by the plaintiffs in Oakland County Circuit
25 Court. First of all, let me back up, and remind the Court that

1 you don't have to go this far, if you don't want to. You can
2 stop at Williamson and recognize that there is no adequate
3 proceeding in state court to follow, that there is no-- as
4 Williamson says, you can go-- you have to go to state court if
5 there is a reasonable, certain, and adequate remedy in state
6 court. We are saying that there isn't here. The statute does
7 not provide for a refund of an overpayment of taxes. It does
8 not provide for inverse condemnation. It provides for nothing,
9 other than the damages claim that you recognized under Section
10 78 L where this was a lack of notice. That's all that it
11 provides. So you can stop the analysis there. But if you feel
12 that you need to-- that there is a reasonable, certain, and
13 adequate remedy, you can recognize that the plaintiffs in the
14 Rafaeli decision are also encompassed as plaintiffs in your
15 case under our class action claim, and they have received the
16 remedy in state court which says, and I think it's on Page 6 of
17 that opinion, she addresses Judge Langford Morris addresses
18 Count Three and dismisses it saying-- stating that the taking
19 amounted to a forfeiture. And that, if the Court wants further
20 briefing on forfeiture, I'm more than happy to provide it. But
21 I do want to point out a couple of things, one is MCL 600.310
22 says that "Personal property used in crimes is abated as a
23 nuisance or forfeited to the state." And my question is, are
24 we going so far as to call what occurred here a crime.
25 There is provisions for forfeitures of buildings at

1 MCL 600.3825. Real property used through a violation of
2 controlled substances can be forfeited pursuant to MCL
3 333.7521. Those are enumerated crimes. Certainly there is not
4 an enumerated crime in this situation at all. It simply
5 amounts to an overpayment of taxes for which there is no state
6 remedy. The matter remains ripe for your review. Williamson
7 does not apply for those reasons.

8 THE COURT: Mr. King, go ahead.

9 MR. KING: Your Honor, the General Property Tax Act
10 at MCL 211.78 talks about first forfeiture and then
11 foreclosure, and hence, there is a provision the way the
12 process works it's the property is forfeited and then
13 subsequently foreclosed and it's a two-step process as part of
14 the provisions of the Tax Forfeiture Foreclosure Act, and as a
15 result citing some other statute that talks about forfeiture
16 for a crime is just kind of ignoring the very statute that we
17 have that has provisions in it that talks about forfeiture.

18 And I suspect Judge Morris used the term forfeiture
19 because that is the term used in the statute for the first step
20 of the process. There is a notice of forfeiture, and then
21 after the forfeiture, then there is a foreclosure proceeding.
22 It also shows that these plaintiffs apparently abandoned their
23 claims in this particular, as I was reading this particular
24 judgment, it talks about the fact that they had abandoned
25 certain claims including their Counts Four through Seven, which

1 are some of their claims under this. The Judge does go on to
2 indicate that the, as you see at the bottom of Page 3 of the
3 order, which is our principal argument, is that all redemption
4 rights expire on March 31st after entry of the judgment. So
5 there is a judgment of foreclosure after the forfeiture, there
6 is a judgment of foreclosure, and then there's a redemption
7 period. And the redemption period then expired, and the
8 treasurer is then vested with title to the property, and after
9 that, the property interest was lost by the prior owner of the
10 property. And as a result, they had forfeited their interest
11 in it based upon the process having been completed and the
12 title having gone to the treasurer. The subsequent sale is a
13 sale just like a sale from any other owner of a fee title
14 interest and whether it generates more funds than the fee title
15 holder paid for it or less funds, it's not excess proceeds of
16 the tax foreclosure because there are no proceeds of the tax
17 foreclosure, there is a deed.

18 THE COURT: I think we are getting into the (b)(6)
19 argument here, let's return for the moment to why or why not
20 Judge Berg was right. I mean the Merkur case appears to say
21 that inverse condemnation actions are only available in the
22 context of eminent domain. Am I right about that, from your
23 perspective?

24 MR. KING: I don't think that it limits them to
25 that. It does say-- it was an inverse condemnation.

1 THE COURT: Let me ask the question a different way.

2 Is there any case out there that says that a cause of action
3 for surplus proceeds is justiciable under the inverse
4 condemnation provisions?

5 MR. KING: Only the opinion of Judge Berg. Since
6 this is the first time that this case has gotten this high in
7 the courts, your Honor. There are no cases on this issue
8 related to tax foreclosures because of that.

9 THE COURT: Let me synthesize where I'm at. If I
10 disagree with judge Berg, and Section 78 L only applies to
11 notice, then why isn't this case ripe?

12 MR. KING: Because just like under Bivins in the
13 federal context, Michigan has a Constitutional provision that
14 prohibits this and claims can be made under the Constitutional
15 provision under Section 10.

16 THE COURT: Article 10 Section 2.

17 MR. KING: Article 10 Section 2. And so that would
18 be the claim that could be made even if you-- if you suggest
19 that the inverse condemnation is limited to other types of
20 actions. There's been no case on these types of tax claims,
21 because it just hasn't gotten into the courts, your Honor. But
22 the Constitutional-- A violation of the Constitutional
23 provisions of the Michigan Constitution of 1963 is actionable
24 and damages can occur based on that. And so just like in the
25 Bivins case, which always makes me smile because it's what,

1 Bivins vs. Six known un-named agents of the--

2 THE COURT: Six unknown agents, I believe.

3 MR. KING: Unknown named I thought it was. So they
4 knew their names, but they didn't know them for purposes of the
5 filing.

6 But anyway, so I would suggest that Judge Berg's
7 opinion is correct that there is, in fact, a remedy in this
8 case.

9 THE COURT: Well, Judge Berg doesn't cite Article 10
10 Section 2 of the Constitution, does he?

11 MR. KING: I believe he does, yes, at the top of Page
12 19.

13 "Unlike Coleman, Michigan State Constitution provides
14 that private property shall not be taken for public use without
15 just compensation, therefore first being secured in a manner
16 prescribed by law. Compensation shall term and in proceedings
17 in a court of record. Michigan Constitution Article 10,
18 Section 2." He does cite it.

19 THE COURT: But the vehicle for filing a lawsuit
20 pursuant to that Constitutional provision is set forth in the
21 next sentence where it talks about the inverse condemnation
22 claim, correct?

23 MR. KING: That is the vehicle that he cites. I
24 would suggest to the Court that he's also said that the State
25 Constitution says that there is-- the compensation can be

1 secured for violation of a Michigan Constitution. And as we
2 learned in Bivins, the fact that there is no statute doesn't
3 necessarily mean that the Constitution-- a violation of the
4 Constitution is not actionable, and I would suggest it's the
5 same way in Michigan as it is under the federal law.

6 THE COURT: Is there any Michigan appellate
7 authority, either on the Court of Appeals level or at the
8 Supreme Court, that says that Article 10 Section 2 of the
9 Michigan Constitution provides its own basis for cause of
10 action?

11 MR. KING: I don't know one way or the other, your
12 Honor.

13 THE COURT: All right. Thank you.

14 MR. KING: Uh-huh.

15 THE COURT: Mr. Ryan, did you have anything more on
16 this issue? Go ahead, sir.

17 MR. RYAN: I wanted to reiterate what the Court has
18 said and recognized, that this matter is ripe, I think that's
19 what the Court was alluding to, that it is ripe. This is not
20 an exercise of eminent domain power for which inverse
21 condemnation claim could be founded. This is exercise of
22 taxing power, and when there is, as I pointed out in Phillips
23 vs. Commissioner where there is a tax statute in place, it
24 needs to provide for a refund in the event of overpayment.
25 When you don't have that, you've got what we allege amounts to

1 a taking, and for which we feel the matter is ripe at this
2 point.

3 THE COURT: All right. Well, for purposes of hearing
4 argument on the (b)(6) portion of the argument, let's proceed
5 under the assumption that I believe the case to be ripe. I'm
6 not at all sure that the defendants' arguments as it relates to
7 Williamson or Judge Berg's opinion in his Rafaeli case carry
8 the day, so at least that's my preliminary view as I sit here
9 right now, so let's proceed to the (b)(6) argument.

10 Go ahead, Mr. King.

11 MR. KING: Thank you, your Honor.

12 With regard to the (b)(6) argument, it's an argument
13 based on failure to state a claim as the Court is aware, and
14 the plaintiffs have an obligation to set forth sufficient
15 factual matter, that if accepted is true, state a claim for
16 relief that is plausible in its facts and it's Iqbal and
17 Twombly, which I'm sure this Court has visited many times since
18 their issuance.

19 THE COURT: That's an understatement.

20 MR. KING: Every judge I've talked to smiles a little
21 bit when Iqbal and Twombly are mentioned.

22 Plaintiffs have claimed a deprivation of property
23 that by taking without just compensation, and the only claim
24 they make is that because where a tax deed statute and the
25 foreclosure is foreclosure for the deed instead of the--

1 instead of a lien process whereby we bid in the taxes that
2 somehow that deprives them of their property. That is the same
3 kind of situation that was before the United States Supreme
4 Court in Nelson vs. City of New York. And in fact, I know that
5 that case indicates that there was some sort of a process that
6 they didn't follow that may have allowed them to get proceeds,
7 but the Court-- the Supreme Court said that in the event that
8 they-- the mere fact that the amount of a subsequent sale of a
9 property, the proceeds from that property exceeded the amount
10 owed in and of itself, which is what they are arguing in and of
11 itself, does not violate the takings clause of the
12 Constitution. And if you take a look at Footnote 1 of that
13 case, it's a lengthy footnot, it indicates that the New York
14 statute is a tax deed statute that they are relying on because
15 if you look in the middle of that it says, the prescribed
16 notice is to the effect that unless the amount paid, and I
17 won't read the whole sentence, but right at the end of it, and
18 directing execution of a deed conveying an estate in fee simple
19 absolute to the city. It was the exact same process that we
20 have here, where there was a substitution for the property for
21 whatever it was that was owed to the government.

22 THE COURT: How do you read-- and I appreciate the
23 reference to Footnote 1-- How do you read Footnote 10 as it
24 relates to potentially distinguishing the Nelson case from this
25 case? And I'm directed, and the reason why I'm pointing this

1 out is that there appears to be some fairly strong language,
2 which you have already directed me to.

3 MR. KING: I didn't want to keep it from your Honor.

4 THE COURT: We hold that nothing in the Federal
5 Constitution prevents this, meaning the taking of-- the
6 retention of the entire proceeds of the sale, nothing in the
7 Federal Constitution prevents this where the record shows
8 adequate steps were taken to notify the owners of the charges
9 due and the foreclosure proceedings, which is basically a
10 notice provision. And there is no issue here in regard to
11 notice.

12 MR. KING: Right.

13 THE COURT: Contrast that language with the language
14 right after Footnote 9, which says, "But we do not here have a
15 statute which absolutely precludes an owner from obtaining the
16 surplus proceeds of a judicial sale." It then cites the
17 Chapman Docks case and gets me to Footnote 10, which I just
18 directed you to. It would appear to me that Footnote 10 does
19 provide some mechanism for a property owner to seek
20 distribution or other disposition of the proceeds of the sale.
21 That is not consistent with Michigan law, correct?

22 MR. KING: No. There is no right to subsequently
23 file an action, which is what I read that as to, within the
24 redemption period to file an action, that's what that says.
25 Within the redemption period you can file an action, claiming

1 that there's some problem with the sale. And among those
2 problems in the excess proceeds, but it says, "and any defense
3 or objection to the foreclosure." So they can file a defense
4 of an objection to the foreclosure, and also apparently they
5 could make a claim that this is a very valuable piece of
6 property. That was apparently what the New York process
7 allowed.

8 THE COURT: And the plaintiffs here can't do that,
9 correct?

10 MR. KING: No. What they can do is within the
11 redemption period come in and redeem the property, and all of
12 the notices indicate that the property will be lost if, in
13 fact, they don't redeem.

14 THE COURT: I guess the purpose of my question is
15 that the portion of the Nelson opinion that I read earlier
16 regarding the we hold portion would appear to be a pretty
17 powerful statement of law, which if not read in the context of
18 the facts of the New York statute would appear to apply to this
19 case, but indeed in certain respects Nelson is distinguishable
20 from the Michigan statutory scheme. Would you agree with
21 that?

22 MR. KING: That's not the position that's been taken
23 by the Second Circuit Court of Appeals.

24 THE COURT: I certainly agree with that. I mean the
25 Minor opinion, funny you got to that, because I've got a yellow

1 sticky on that case on the bench.

2 MR. KING: Yes.

3 THE COURT: And I appreciate that's what the Second
4 Circuit says.

5 MR. KING: Yes.

6 THE COURT: And Judge Cabranes is an excellent
7 appellate judge, but the circuit opinion appears to ignore the
8 other portion of the opinion a paragraph before and ignore the
9 footnote.

10 MR. KING: I don't know that we can say that the
11 judge ignored that. It's not in the opinion. He may have
12 concluded it wasn't important for the decision, as I'm
13 asserting, it wasn't important for the decision in Nelson vs.
14 New York. And also, there is another case, Zackery vs. Clinton
15 County New York. That is the U.S. District Court for the
16 Northern District of New York that holds the same thing, cites
17 Nelson. It's 2003 Westlaw 24197685 and, of course, the Supreme
18 Court summarily reversed the Seventh Circuit in Balthazar vs.
19 Mari Limited, 396 U.S. 14, and the argument is well, if a
20 summary of reversal is not a decision on the merits, but it
21 would seem since the Illinois process is similar to the
22 Michigan process, that it would have given-- that had that
23 footnote been in-- that you had to read those two together and
24 it was a limiting factor, as the Court is suggesting, and that
25 the last sentence doesn't stand on its own, that the Supreme

1 Court wouldn't have done that.

2 So and there isn't any caselaw except for-- except
3 for the Coleman decision, which appears to be a case that is
4 looking for a particular result. I hate to say that, but it
5 does appear to be that. And it goes a long distance to get to
6 a particular result down the line, and when it-- all it had to
7 have said was, well gee, at least with regard to the (b)(1)
8 claim, gee, there is no Constitution. But it goes out of its
9 way to provide a remedy and I believe it's based upon the
10 footnote that says gee, they've amended the statute and if we
11 can only hang on a little longer, he is going to get his
12 remedy. And so I suggest that that is the case that's a little
13 bit out in the wilderness, if you will, from all of these other
14 cases that come right along and follow Nelson, and say that the
15 mere claim that there are, as they call them, excess proceeds,
16 I don't believe they are proceeds from a tax sale, quite
17 frankly, because remember the foreclosure results in a deed,
18 and the deed then results in fee title, and the fee title is
19 either subsequently kept, it's subsequently transferred to
20 other governmental units, it's subsequently sold by the
21 treasurer based on being the fee owner of the property. And I
22 would suggest that where they really go off the rails is to say
23 that the proceeds of that sale was, what is in essence an
24 excess property sale is, in fact, excess proceeds of the tax
25 foreclosure. I don't believe that is the case. I don't

1 believe that that is the way the statute is set up, and if it
2 were, we would be tax lien state where we would bid in our
3 lien, just like you do in a real estate foreclosure case. If
4 you've got a mortgage, you bid in your lien, and the excess
5 proceeds then are to the extent that the property is sold for
6 more than that, then they go to the prior owner or other lien
7 holders, of course. So I would suggest that Nelson says what
8 Nelson says, and that sentence means what it says, and it's not
9 modified before, because if it were, Bathazar wouldn't have
10 come out the way it did, Minor wouldn't have come out the way
11 it did, Zachery would not have come out the way it did, Rafaeli
12 would not have come out the way it did. And so all of the
13 cases line up on one side of the issue, except for the Coleman
14 case, your Honor. Thank you.

15 THE COURT: Thank you, sir.

16 Mr. Ryan.

17 MR. RYAN: That's a pretty big basket to put all of
18 those cases in one location, I think.

19 Let me point out Nelson and talk about that. And
20 there the citizen, the New York citizens were made aware of
21 their rights, yet for a period of seven weeks, yet took no
22 action to enforce those rights for a period of seven weeks.
23 And that's pretty much the foundation upon which the result is
24 in Nelson. They had the ability to do something for seven
25 weeks, yet they didn't. The Nelson court really struggles with

1 this and points out U.S. vs. Lawton in the 110 U.S. 146, which
2 states, "To withhold the surplus from the owner would be to
3 violate the Fifth Amendment to the Constitution and deprive--
4 and to deprive him of his property without due process of law
5 or to take his property for public use without just
6 compensation." And that's on Page 109 and 110 of the Nelson
7 vs. New York opinion.

8 THE COURT: All right. But the Nelson panel or the
9 Nelson court clearly says that the Lawton case was a matter of
10 statutory construction and not a Constitutional case.

11 MR. RYAN: Correct. That is correct, yes. But the
12 analysis is still there. But I can't leave it without pointing
13 out that as Nelson court does, almost in the first paragraph,
14 it states, "However, appellants," and goes with the citizens
15 here appealing, "the appellants took no action during the seven
16 weeks allowed for redeeming the property through payment of
17 back charges nor during the 20 additional days allowed for
18 answering the City's complaint. I think that has as much to do
19 with the result here as anything in Nelson. The same thing
20 holds true with Balthazar. And there it went that way where an
21 owner failed to redeem his property, the purchaser of the tax
22 lien may obtain the property and gain a windfall of all the
23 surplus. That is the holding of Balthazar. But the common
24 thing between Nelson and Balthazar is where have you an owner
25 who fails to redeem, fails to redeem. You have those in both

1 situations here.

2 Here as we pointed out in our brief, we've got a real
3 backwards analysis with redemption here. We've got redemption
4 occurring before judicial sale where the surplus is then
5 realized, and it's a really backwards analysis of the whole
6 situation.

7 THE COURT: I don't understand, backwards analysis.

8 MR. RYAN: Well, in the situation, that the tax
9 allows for the taking to occur, the foreclosure to occur. The
10 redemption period expires before the taking occurs, is that
11 kind of it-- before the sale occurs, then the sale occurs after
12 the redemption period.

13 THE COURT: The redemption period expires and the
14 deed goes over to the treasurer.

15 MR. RYAN: Right. Right.

16 THE COURT: And then the sale occurs.

17 MR. RYAN: Correct.

18 THE COURT: All right. Let me ask this question:
19 What if the county chose not to sell one of your client's
20 parcels and just let it sit there?

21 MR. RYAN: The taking would occur here when there is
22 a surplus that's realized by the treasurer that's not refunded
23 after satisfaction of the taxes. And we are not arguing here
24 that the taxes shouldn't be paid. We are saying that the taxes
25 should be paid. We are even acknowledging that the property--

1 the process of taking property to satisfy taxes should occur.

2 We are saying the taking occurring. There is no right--

3 there's no fundamental right that the treasurer has to keep the

4 surpluses.

5 THE COURT: So the taking is the equity which is post

6 deed transfer to the county treasurer, is that your argument?

7 MR. RYAN: Just to add one more, it's the retention

8 of the proceeds. It's the fact they have retained the proceeds

9 after satisfaction of the underlying tax.

10 THE COURT: But it's post deed moving to the county

11 treasurer?

12 MR. RYAN: Entirely correct, the right.

13 THE COURT: What is the source of state law that says

14 that a property owner has an interest in that equity?

15 MR. RYAN: It goes all the way back to 1844, Seaman

16 vs. Hammond, I can give you the cite.

17 THE COURT: I'm not at all sure that case helps you

18 now in light of the status of Michigan law. And I appreciate

19 the fact that prior to 1999 perhaps Michigan handled things

20 differently, but.

21 MR. RYAN: The only other references I can make are

22 to the taxation of personal property, which states that if

23 there is an excess surplus that the surplus is returned. I can

24 reference the Court to our mortgage foreclosure statute, which

25 permits for the excess surplus to be returned to the mortgagor.

1 Those are the fundamental precepts that Michigan law has in
2 place. I don't have a case here to say to the Court well, we
3 have a fundamental right to these proceeds.

4 THE COURT: In light of that, I mean the Coleman case
5 that you've quite appropriately directed me to because it helps
6 you--

7 MR. RYAN: Right.

8 THE COURT: --there is no question about that, but
9 even the Coleman case says that the right to the equity has got
10 to be grounded in state law. And in the absence of any
11 authority that says that Michigan gives a property owner under
12 these circumstances the right to the equity, isn't that fatal
13 to your argument?

14 MR. RYAN: I don't think it's fatal, because there is
15 no-- the flip side is not true either. There is no authority
16 that allows the treasurer to keep it, to a windfall. All we
17 can reference here--

18 THE COURT: But the treasurer-- the treasurer cannot
19 sell the property, correct?

20 MR. RYAN: Well, then the taxes aren't satisfied
21 either, are they? And the taxes at some point there has to be
22 a sale that occurs in order to satisfy those taxes.

23 THE COURT: All right. And the only way the sale
24 occurs is after the time that the deed vests in the county
25 treasure, correct?

1 MR. RYAN: Correct.

2 THE COURT: So the language that you pointed me to in
3 the 1844 case clearly says that the right to the excess
4 proceeds shall be given to the owner, and at the time that this
5 property gets-- that your client's gets sold, the county
6 treasurer is the owner of the property, aren't they?

7 MR. RYAN: No, no. The owner in reference to Seaman
8 vs. Hammond is the prior owner who owed the taxes, and we are
9 saying the analysis is the same here.

10 THE COURT: But that was-- wasn't the 1844 case under
11 a different statutory scheme?

12 MR. RYAN: It was, it was. But the precepts are
13 there. And--

14 THE COURT: Well, the precepts can't be there unless
15 the statutory scheme is the same, right?

16 MR. RYAN: Well, that's true. But the flip side is
17 also incongruous, that just before lack of that, that the
18 county treasurer can keep the proceeds. Just for lack of some
19 fundamental right for the homeowner to have an interest in the
20 surplus.

21 THE COURT: But the state has the authority, the
22 policy making authority to set forth in statutes the interests
23 of property in the state, correct?

24 MR. RYAN: That's true, and they have, but not in
25 this.

1 THE COURT: In essence, aren't you asking me as a
2 member of the judiciary and the federal judiciary to basically
3 engraft that onto Michigan State law?

4 MR. RYAN: I think its there, its already there. It
5 just hasn't--

6 THE COURT: Where?

7 MR. RYAN: It's in the personal property tax.

8 THE COURT: But there is plenty of reasons why a
9 state legislature and the executive branch of government in the
10 state might choose to deal with mortgage foreclosures or
11 mortgage liens and personal property taxes in a different
12 fashion, isn't there?

13 MR. RYAN: I think that the concepts are the same.
14 You've got a satisfaction of a mortgage, you have a
15 satisfaction of taxes on personal property, and then you have
16 an excess. But you don't have anything permitting the excess.
17 What you do have is a satisfaction of taxes to which there is
18 an entitlement to a refund. And that's kind of the essence
19 here, is that you now have overpaid your taxes, and there is no
20 justification for keeping the proceeds.

21 THE COURT: How do you read Footnote 12 of Judge
22 Sullivan's opinion, which is referencing a Wisconsin decision,
23 the Ritter decision?

24 MR. RYAN: I am familiar with that, and in fact, I
25 have a copy of the Ritter decision here. The Ritter reference,

1 I think, makes reference to Illinois-- or I'm, sorry Wisconsin
2 law, which as the Court points out, gave the taxpayer a right
3 to the proceeds, did it not? I think that's kind of what
4 you're-- on page, let's see here.

5 THE COURT: I think it's exactly the opposite. The
6 Wisconsin Court of Appeals said that they didn't have an
7 interest in the proceeds.

8 MR. RYAN: Yes, I see that here. It says, the
9 takings clause comes into play only if the state Constitutional
10 tax statutes create a property interest in the surplus. Ritter
11 at 9, 10, and 12. Wisconsin Court of Appeals considered
12 whether the plaintiffs had a property interest in the excess
13 proceeds of a foreclosure sale, and upon concluding that they
14 did not, Wisconsin law denied their takings claim. All I can
15 say there is that we don't have any kind of promulgation from
16 the legislature or the Michigan courts that says that our
17 taxpayers do have a right here. I have to recognize to the
18 Court that we don't have that I don't have a case to show. All
19 I can respond to that is to say that there is-- the opposite is
20 not there either, that once taxes are satisfied, there is no
21 justification for the treasurer to keep the proceeds.

22 THE COURT: But that's a public policy argument,
23 correct? I mean it's not a legal or anything.

24 MR. RYAN: There is no foundation that they keep it.
25 There is no foundation-- equally there is no foundation that

1 the taxpayer has that they are entitled to the proceeds.

2 THE COURT: Doesn't the statute say that the county
3 treasurer gets to keep the proceeds of the sale? I mean I
4 think it says that in black and white, doesn't it?

5 MR. RYAN: It does say that. It says under Paragraph
6 78 M it goes to the general fund, yes. But to a surplus, to
7 all the problems that we have here that we have raised that is
8 a takings, that this violates the Fifth Amendment.

9 THE COURT: But the-- and I appreciate the reference
10 to the Con-- the Fifth Amendment of the U.S. Constitution, but
11 the United States Constitution protects property interests, it
12 doesn't creates them, correct?

13 MR. RYAN: That is correct. That is correct
14 entirely.

15 THE COURT: All right. Thank you, Mr. Ryan.
16 Mr. King.

17 MR. KING: Just a couple of responses, your Honor.

18 What we have here really is a misconception by
19 plaintiffs of the process and how it works. They keep going
20 back to the process that it occurs in lien states and occurs
21 with personal property. There isn't any deed when the
22 treasurer seizes and sells personal property that goes to the
23 treasurer first. It's the old lien situation, and it's the
24 same way with mortgage foreclosures as the Court pointed out.
25 Quite frankly, with regard to the language the Court

1 cited me out of Nelson at the top of-- well, on-- at the end of
2 the next to the last paragraph of the opinion where it says
3 that what the City of New York has done to foreclose real
4 property for charges four years delinquent and in the absence
5 of timely action to redeem or to recovery-- or to recovery it
6 says, any surplus retain the property the entire proceeds of
7 the sale. That's simply a reference to the New York statute
8 and what the statute provided. It provided for two options
9 there. And so the Court's absolutely right. The Nelson court
10 took the statute as it found it and said these are the options
11 under the statute. Under the Michigan statute, under the
12 Illinois statute, under the Second Circuit's decisions and
13 those cases, those options aren't available, because what
14 happens is the property is first foreclosed, the foreclosure
15 results in a deed. There is a redemption period. The
16 redemption period is extinguished before the deed gets to the
17 treasurer, and so if the statute had only read in New York
18 action to redeem and didn't have a recovery of the surplus
19 provisions, I would suggest to the Court that the only
20 difference in that section would have been what the City of New
21 York has done to foreclose real property for charges four years
22 delinquent and in the absence of a timely action to redeem, or
23 the entire proceeds of the sale. I mean it would take out the
24 section that talks about recovery of surplus, because it simply
25 isn't in the statute.

1 And remember, there are notices that occur. And the
2 notices say exactly what is going to happen. It's not-- There
3 is no surprises here. There is a regulatory statutory
4 procedure that takes three years to complete once the
5 delinquency has occurred with multiple, multiple notices, not
6 only of the delinquency of the taxes, not only of the
7 forfeiture, not only of the-- there is a show cause hearing,
8 there's the foreclosure, and all the way along the process the
9 notices say you are going to lose your property if you don't
10 redeem or pay the taxes. And they don't, and the deed gets
11 issued, and then the treasurer is the owner of the property,
12 subsequently sells the property, the few parcels that are
13 sold. You can see from what was filed in this case that it's
14 not even close to every parcel, most of the parcels that have
15 value get redeemed, your Honor. That's very surprising to me,
16 but--

17 THE COURT: That's an interesting question. How--
18 and I don't know whether there are any stats on this or not,
19 but what percentage of the sales by the treasurer's, pursuant
20 to this statute, result in amounts being paid for property in
21 excess of what the taxes are due. Is there any body of
22 information out there on that?

23 MR. KING: The only thing that I saw was in the class
24 certification materials, they said in certain counties there
25 are these many that had excess proceeds, and they were a fairly

1 small number of the overall amounts out of that county's total
2 sales-- total foreclosures, excuse me. So I would refer to
3 their documents.

4 THE COURT: Let me test the limits of your argument,
5 Mr. King. And this is a very extreme example, but let's say
6 the unpaid property taxes are \$1.98 and the statutory
7 provisions are fulfilled, the deed goes over to the county
8 treasurer, the sale is done, the sale price of the property is
9 a million dollars. Does there come a point where the exercise
10 of the taxation power becomes something other than that?

11 MR. KING: We don't have a separate process for
12 wealthy individuals with big houses and for poor individuals
13 that don't have any equity in their property. We have one
14 process, and it's for everybody, your Honor, and the treasurer
15 never knows, quite frankly, until after the fact whether or not
16 the treasurer has caught a whale or a minnow, if you get my
17 drift, your Honor, and I understand that you get the whole--

18 THE COURT: At some point doesn't it become
19 confiscation?

20 MR. KING: No more so than if this Court entered an
21 order saying that if you came in and purged yourself of
22 contempt you won't be fined, but if you don't do something, I'm
23 going to fine you a large amount of money per day and I don't
24 do anything, and then subsequently the Court fines me. Gee, I
25 mean, hindsight is always 20/20. You look back and say gee, if

1 you had only done this he would have paid the \$1.98, the taxes
2 would have been satisfied, that's not the way the system works
3 at all, your Honor. The system simply says unpaid taxes, you
4 are going to lose your property for the unpaid taxes, here's
5 the amount of the unpaid taxes, please come in and pay them.
6 Please do that. And it's multiple notices that same-- and
7 remember there's no argument that the notice is bad here,
8 that's not what we are talking about. That says what the
9 result is going to be, and now after the result occurs, they
10 come in and say well, we know that the deed's been issued, but
11 even though there is a deed, we still have an interest, your
12 Honor. That's not what the statute says, that's not what basic
13 real estate law says, it's not what any law says. But it just
14 ain't fair, it just ain't fair, your Honor, that is the
15 argument here. And they are not going to come in here if the
16 property taxes were, you know, \$10,000 and the treasurer got
17 \$10,000 and one penny. They are going to come in here and show
18 you the cases, the few cases, that the treasurer caught the
19 whale, so to speak, if you will. And I don't think the dollar
20 amounts should be the driving factor in the opinion. It's not
21 the dollar amounts. We don't have a separate set of laws for
22 big dollar amount cases and a separate set of laws for small
23 dollar amount cases, and it is really the principles rather
24 than the dollar amounts that control. Thank you.

25 THE COURT: Thank you.

1 Go ahead, Mr. Ryan.

2 MR. RYAN: Thank you, your Honor.

3 I really appreciate the Court's challenge with regard
4 to the Ritter vs. Ross footnote there in the Coleman decision.
5 I went back to my file and was able to find a case from New
6 Hampshire Thomas Tool Services Inc. vs. Town of Croyden, 145
7 New Hampshire 218, 2000. Granted, not binding on this Court,
8 but there is an element there I would like to reference here.

9 Keeping in mind that the U.S. Constitution cannot
10 create a right, it only protects rights. It says from that
11 decision in New Hampshire, all property taken requires just
12 compensation because the right to property is a fundamental
13 right in this state, all subsequent grants of power, including
14 the taxing power are limited as to how they adversely affect
15 it. If the Court needs, I can find caselaw or even reference
16 to the Michigan Constitution that states that the right to
17 property is a fundamental right here in the State of Michigan,
18 which gets around the problem posed by the Court and raised in
19 Ritter vs. Ross. Thank you.

20 THE COURT: All right. Thank you.

21 Well, I'll tell you where I'm going. I'm going to
22 issue a written opinion in this case. I do believe that the
23 portions of the motion pursuant to (b)(1), that is, the
24 defendants' assertions that the case is not ripe are not
25 meritorious and I intend to deny the (b)(1) portion of the

1 motion, because I do believe the case is cued up. I don't
2 think the second prong of Williamson is satisfied here, nor do
3 I believe that the inverse condemnation provision or the state
4 Constitutional provision satisfy the plaintiffs' need for an
5 adequate procedure to raise the claims that are raised in this
6 case. So I'll deny on the basis of (b)(1). However, I think
7 I've flagged my thought process during the course of the
8 questioning on the (b)(6) issue, I think the county treasurer
9 clearly has the better of the argument here. The bottom line
10 is that the plaintiffs cannot show me a source of law under
11 Michigan law that creates the property interests that they seek
12 to enforce here, that is the equity in the-- or that is the
13 amount of money that the county treasurer receives at a sale
14 post deed transfer to the county treasurer. There just is no
15 authority under Michigan state law and Michigan state law
16 creates the property interests here, not the U.S. Constitution,
17 there is no property interest demonstrated here.

18 So in the Court's judgment, for the reasons that I
19 will more fully explain in my opinion, the (b)(6) motion is
20 meritorious, the plaintiff has failed to state a claim.
21 Accordingly, I intend to dismiss Counts One and Two, and will
22 not continue jurisdiction over Count Three, because I believe
23 that raises pendant state claims, and I don't intend, having
24 dismissed the federal claims, I don't intend to exercise
25 jurisdiction over Count Three. So I'll issue an opinion and

1 order consistent with what I've just said. I don't know how
2 long it will be, but I'll get out as soon as I can.

3 Thank you, gentlemen.

4 MR. KING: Thank you, your Honor.

5 COURT CLERK: All rise.

6 Court is adjourned.

7 (At 2:48 p.m., proceedings were concluded.)

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REPORTER'S CERTIFICATE

I, Kathleen S. Thomas, Official Court Reporter for
the United States District Court for the Western District
of Michigan, appointed pursuant to the provisions of Title
28, United States Code, Section 753, do hereby certify
that the foregoing is a true and correct transcript of
proceedings had in the within-entitled and numbered cause
on the date hereinbefore set forth; and I do further
certify that the foregoing transcript has been prepared by
me or under my direction.

/s/

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